

DOCKETED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

C

FILED

THE MAGNAVOX COMPANY, et al.,

Plaintiffs,

-v-

BALLY MANUFACTURING CORPORATION,
a Corporation, et al.,

Defendants.

NOV 12 1975

H. STANLEY CLERK
Consolidated Civil Action
UNITED STATES DISTRICT COURT
Nos. 74 C 1030
74 C 2510

TRANSCRIPT OF PROCEEDINGS

had at the hearing of the above-entitled cause before the
HON. JOEL M. FLAUM, Judge of said Court, in his Courtroom,
United States Courthouse, 219 South Dearborn Street, Chicago
Illinois 60604, on Tuesday, November 4, 1975, at 10:00 A.M.

PRESENT:

MR. THEODORE W. ANDERSON,
MR. DIMITRI D. ALLEGRETTI and
MR. JAMES T. WILLIAMS
(Newman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602),

appeared on behalf of the Plaintiffs;

THOMAS K. CAMPBELL — COURT REPORTER — PHONE HA 7-6563
219 SOUTH DEARBORN STREET • SUITE 2318 • CHICAGO, ILLINOIS 60604

PRESENT: (Continued)

MR. DONALD L. WELSH and
MR. SIDNEY KATZ
(Fitch, Even, Tabin & Leudeka
135 South LaSalle Street, Room 900
Chicago, Illinois 60603),

appeared on behalf of the Defendants
Bally Manufacturing Corporation, Empire Dist., Inc
and Midway Manufacturing Company;

MR. EDWARD C. THREEEDY
(Threedy & Threedy
111 West Washington Street
Chicago, Illinois 60602),

appeared on behalf of the Defendant
Chicago Dynamic Industries, Inc.

MR. WILLIAM MARSHALL LEE
(Lee & Smith
10 South Riverside Plaza, Suite 330
Chicago, Illinois 60606),

appeared on behalf of Atari, Inc.

* * * * *

THE CLERK: 74 C 1030 and 74 C 2510, Magnavox versus
Bally for a ruling on a motion to sever and transfer.

MR. ANDERSON: Good morning. Theodore Anderson for
the plaintiff.

I would like to introduce Dimitri Allegretti,
who will also participate for plaintiffs in further
proceedings.

MR. WELSH: Donald Welsh and Sidney Katz for defendant
Bally and Midway.

MR. THREEDY: Edward Threedy for Chicago Dynamic Industries, Inc.

THE COURT: Very well. I'm sorry you were not all here. I'm not quite prepared with the ruling and it will be some short while, not long. I hope to have it shortly.

I had hoped that we would be able to contact everybody by today to tell you not to come in for that, but I apologize.

MR. WELSH: We have a couple of other matters, your Honor.

I think you had indicated that you wanted a report on status.

THE COURT: Yes.

MR. WELSH: We also have pending a motion to extend discovery.

MR. ANDERSON: If I can interrupt on the question of transfer before we get into other matters, there is one significant fact input that developed on the 24th of October.

Atari, a former defendant here, was dismissed out for lack of venue. Atari then sued Magnavox and Sanders in California for declaratory judgment.

Judge Sweigert on the 24th transferred that declaratory judgment action to this Court and therefore it will be, I presume, consolidated with these cases for trial.

THE COURT: All right.

MR. WELSH: I might comment on that, your Honor.

That has nothing to do with Midway, who is a moving party with respect to the motion to sever and transfer.

THE COURT: All right.

MR. WELSH: I was speaking to a motion which I filed to extend discovery.

We've been very active in this case. We have several things scheduled, depositions now scheduled, running through the first week in December.

I would like to suggest that the discovery be reopened, rather than having a closing date. Again, there are many factors that indicate that this would be appropriate, particularly in view of Atari being transferred here and being a new defendant. But we have found in the discovery that we have been pursuing that it is taking much longer than indicated.

For example, two weeks ago, or the week before last, we were in California. There were six depositions scheduled, including one for Magnavox and Sanders, and we were only able to get through three.

This last week in Massachusetts, a similar situation, so we have rescheduled those depositions.

Now, I have a list here, as your Honor requested, indicating proceedings that have gone on since

the last status call on July 28, and there are several matters here. I don't know if your Honor wants to get into them. It is clear that there has been much activity and much more is indicated.

MR. ANDERSON: Your Honor, may I?

THE COURT: Surely.

MR. ANDERSON: I note on this schedule of activities Mr. Welsh has apparently listed everything except coffee breaks. He submitted a similar schedule on July 28 and from July 28 until discovery was to have closed on October 15, they took not a single deposition. They tried to schedule one or two and I will admit that I had a conflict that forced that to go over a week beyond that date.

They did file a motion a few days after, technically, the closing of discovery, asking to have it extended until November 24. And now, of course, Mr. Welsh is asking for something far beyond that.

I don't think the addition of Atari should slow down the trial. There are no new patents involved; there are really no new products. Atari has been before this Court, its products have been before this Court.

Midway Manufacturer's products and the accused products were designed by Atari, and to that extent we don't agree with Mr. Welsh that Atari's transfer here does not have any bearing on Midway's effort to get out

of this court.

MR. LEE: I am W. M. Lee.

MR. ANDERSON: May I finish with that point?

MR. LEE: I'm sorry. I thought you were through.

MR. ANDERSON: I'm not.

On July 28, you may recall you indicated you were going to extend discovery for 60 days and made it a point that there should be no assumption, there would be no additional extensions beyond that time.

We are very anxious to get the case to trial. It is the kind of product for a quick trial, expedient justice is extremely important. And we would urge the Court to set a pretrial date for filing pretrial orders, if at all possible, at this time.

MR. LEE: Your Honor, I am W. M. Lee. I represent Atari, Inc., and I will have to ask the indulgence of the Court to speak here, because the case in San Francisco has not yet been transferred.

Thank you, your Honor.

MR. ANDERSON: The minute order was entered on the 24th. The Judge is out of town and has not been able to sign the formal order. The file has not been transferred to Chicago, that's true.

MR. LEE: I checked the file this morning, and the case is not here, as far as the Clerk's office is able to

ascertain.

MR. ANDERSON: That's true.

MR. LEE: As far as Atari is concerned, they were dismissed out of this present litigation about 15 months ago. They have not been participating in all of the discovery, and if the Atari case stays here, and that is a question, and if it is assigned to your Honor and if your Honor consolidates it with this case, we will most certainly ask the Court for an opportunity to conduct discovery on behalf of Atari.

MR. ANDERSON: In that regard, there is one other factual point that I should not have neglected to mention. Sears, Roebuck, in their 1975 Christmas catalog, has a full page ad for a video game which is made by Atari; and as a result of that, we have also filed a complaint against Sears, Roebuck, and that case is also assigned to your Honor.

MR. WELSH: That was recently filed, your Honor, late in September.

I might comment further that in view of what has transpired and the matters that are still to be completed in discovery, I think that the setting of a closing date earlier possibly was premature, and I feel that now to set a closing date not only would be premature, but would be prejudicial, because we have several defenses here. We are pursuing one of them currently, and we are going ahead.

We have depositions scheduled starting next week, as I indicated, through the first week in December, and as I passed up at our last call a list of unfinished discovery, we have gone forward with five of the nine items on there, but we have not yet completed any one of them and the others are still remaining, so I urge the Court to set a closing date at this time would be prejudicial to our development of these defenses.

THE COURT: If I set it for 90 days, would it be prejudicial?

MR. WELSH: We will go forward as fast as we can, your Honor.

THE COURT: Is there any time where I could set it where you wouldn't consider it prejudicial if I cut off discovery?

MR. WELSH: I would think that would be reasonable.

THE COURT: Well, what I will do is, I won't set a discovery cutoff date at this time, but I will have a status report in 45 days, on the 18th of December. And I would again like a submission of what has been accomplished and specifically I would expect all discovery that was set for November and December, the first half of December, to be completed. That has been scheduled.

MR. WELSH: I expect to go forward with that, your

Honor.

THE COURT: I would think that if a long way down the road, it could be accomplished on that part of the discovery, the Court might be well in a position on the 18th of December to set the cutoff date for a very short time thereafter, and the submission of the final pretrial orders.

Now, I understand that we may have a new situation arising with Atari, but until that grows to fruition and the question is whether it is here, whether it is assigned to me and whether it is going to be consolidated, I think we ought to proceed as best we can with this case.

So I will accept your representations that the schedule has been a little too tight. My limited experience is that the tighter it is, the faster things move along, though. I would rather open it up than leave it open-ended. so I would like to look forward to progressing in the next 45 days.

MR. KATZ: I would like to note a number of our witnesses are located on the east coast and west coast, it seems, and we keep traveling up and back.

Mr. Anderson has indicated he would prefer not to run more than three days in any one week at a time, and that is something that has been recently developed in connection with these depositions. So I would like to note

that part of the time is being consumed in traveling up and back between the west coast and Chicago and the east coast and Chicago.

THE COURT: I can appreciate that this is involved, but I would think in 45 days we would be able to, even on three-day work weeks, be able to depose a good number of the people that are scheduled for early December and November.

MR. WELSH: We will go forward.

THE COURT: All right.

MR. ANDERSON: Your Honor, there is a motion we filed yesterday to amend the complaints in the Midway case, and the Seeburg case. I presume those will not be opposed. They are merely to add the reissued patents to the case. All of the parties have seen those reissue files as early as last July.

MR. THREEDY: I will beg to differ with that. Chicago Dynamics has never seen a research file. In fact, --

MR. ANDERSON: They were available, if the parties wanted to see them.

MR. WELSH: We have no objection, your Honor. If we may have an extended period within which to file our response to the amended complaint and our actions, we just indicated we are going to be tied up into the middle of December, and I would like to request we have 60 days within which to prepare our response.

MR. ANDERSON: Your Honor, I can see no reason for that. The patents are substantially identical with the few extra additional claims that were added during prosecution. I suspect when the answer is filed, it will probably be identical to the answer that is already on file.

THE COURT: Is there objection to the filing from anyone other than Chicago dynamics?

All right. I would like --

MR. ANDERSON: I'm not sure that Chicago Dynamics objected.

MR. THREEEDY: We have not objected. I just made a note we had not been advised of the reissued patent.

THE COURT: I will allow 30 days, and if that is an oppressive time schedule, I will hear the parties.

MR. WELSH: Your Honor, we expect to be tied up with these depositions, as I indicated, clear through the first week in December. It is possible that we are going to be adding counterclaims in our -- it is not just a pro forma admission or denial of the allegations of the amended complaint, but --

THE COURT: All right, I will set it for 45 days and you are coming in in 45 days, anyway. If at that time your response can not be formed up, I will hear from the parties on why it cannot. But let's see if we can get the response to the amended complaint in on the 18th.

MR. ANDERSON: Thank you, your Honor.

MR. WELSH: Thank you.

(Which were all the proceedings had in
the above-entitled cause.)

Plaintiff,

-7-

PAULS MANUFACTURING CORPORATION,
a Corporation of Ill.,

Defendants.

Consolidated Civil No.
No. 71 C 1030
74 C 1110

C E R T I F I C A T E

I hereby certify that the above and foregoing
transcript, pages 1 to 12, inclusive, is a full, true and
accurate transcript of the original shorthand notes taken
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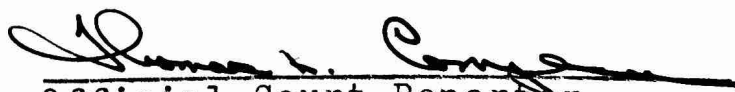

Court Reporter
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